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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 517.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

GEORGE A. MORRISON, JOHN HERRIMAN, AND JOSEPH A. ALEXANDER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 517.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

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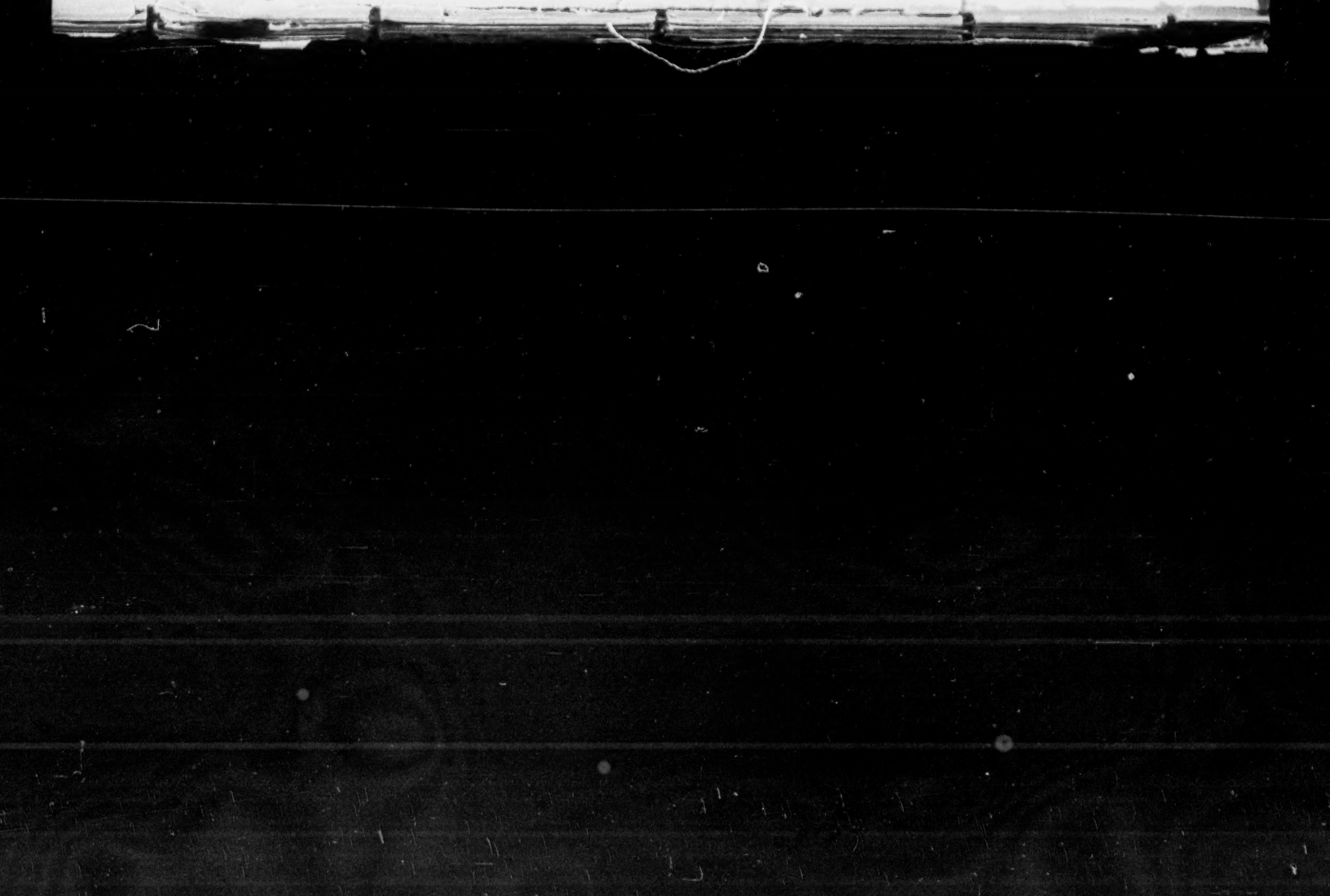

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between George A. Morrison, John Herriman, and Joseph A. Alexander, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appear; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-six, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT.

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

2 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against George A. Morrison et al., defendant in error. Writ of error. Filed M'ch 14, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to 39, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against George A. Morrison, John Herriman, and Joseph A. Alexander, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fifth day of October, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT.
Clerk.

3 U. S. circuit court for the southern district of New York.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, of the

term of October, 1874, to wit, of the 21st day of December, in the year of our Lord one thousand eight hundred and seventy four.

Witness the honorable Nathaniel Shipman, one of the judges of the said circuit court.

KENNETH G. WHITE,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 10th day of November, 1873, in October term of that year, before the judges of the
4 circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came George A. Morrison, John Herriman, and Joseph C. Alexander, by B. L. Ludington, their attorney, and brought into the said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

5 U. S. circuit court.

GEORGE A. MORRISON ET AL.
vs.
CHESTER A. ARTHUR.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The above-named plaintiffs come here into court, and by B. L. Ludington, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 2d day of July last past, an action was commenced in the supreme court of the city of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was duly served upon the defendant herein in the said supreme
6 court. That the defendant afterwards, by his attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the 18th day of October, in the year of our Lord one thousand eight hundred and seventy-three, the said action was in the form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ with the summons aforesaid, and did file the same in this court according to the course and practice of this court; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

7 And the plaintiffs accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case, for that whereas the said defendant, on the 2d day of July, one thousand eight hundred and seventy-three, at the city of New York, in the southern district aforesaid, was indebted to the said plaintiffs in the sum of five hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said

defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of
8 the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when the defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and
9 indebted to the said plaintiffs in the further sum of five hundred dollars of lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendant, in the consideration thereof, afterwards, to wit, on the same day and year, and at the same place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs for the said de-
10 fendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and thereof the plaintiffs bring suit, &c.

11 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR *ads.* GEORGE A. MORRISON & AL.

And the said defendant Chester A. Arthur, by George Bliss his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

GEO. BLISS,
Defendant's Attorney.

12 And the said defendant, for a further plea in that behalf interposed to the plaintiff's declaration, by leave of the court first had and obtained, says: that plaintiffs ought not to have and maintain their said action against the defendant, because, he says that the moneys alleged to have been paid by plaintiffs to defendant in the allegations in that behalf set forth in said plaintiffs' declaration and bill of particulars thereunder served pursuant to the act of Congress in such cases made

and provided, were had and received by defendant for and on behalf of the United States, while defendant was exercising the office of collector of the port of New York, and in payment for duties due from plaintiffs to the United States on certain importations from a foreign country into the said port of New York by the vessels
13 and at or about the times mentioned in said bill of particulars, and that said particular moneys in said bill of particulars mentioned constitute a part of the lawful duty of sixty per cent. ad valorem then due and owing to the United States by plaintiffs for the duty at said rate on silk veils, then and there imported as aforesaid, which said silk veils were dutiable accordingly, under section eight of the act of Congress entitled "An act to increase duties on imports and for other purposes," approved June 30th, 1864, and that the amount of duty at sixty per cent. ad valorem, on said silk veils, collected as aforesaid, was calculated upon the invoice-value, and the entry thereof, as presented by the plaintiffs to defendant, as collector as aforesaid, upon their said importations, and was and is the true and lawful duty
14 on the said silk veils. And this defendant is ready to verify.

GEORGE BLISS,
United States Att'y for Defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Chester A. Arthur, the above-named defendant, being sworn, says that the above plea is true in substance and matter of fact.

C. A. ARTHUR.

Sworn to before me this 16th day of December, 1874.

HENRY DONNE,
Notary Public, N. Y. Co.

15 United States circuit court, southern dist. of New York.

GEORGE A. MORRISON ET AL.
vs.
CHESTER A. ARTHUR.

The plaintiffs, replying to the amended plea of the defendant herein, say that the plaintiffs ought not to be barred from having and maintaining their action against the defendant by reason of anything in the said plea alleged, because, they say that the moneys paid by the plaintiffs to the defendant, as set forth in the declaration and bill of particulars herein, were not due from the plaintiffs to the United States, and did not constitute a part of the lawful duty of sixty per cent. ad valorem then due and owing to the United States by plaintiffs for duty at said rate on silk veils imported by said plaintiffs as in said plea alleged,
16 because, they say that the articles imported by the plaintiffs were not silk veils, and were not at the time of the importation and entry therof liable to a duty of sixty per cent. ad valorem, but the same were a manufacture of silk and were crape veils, and at the time of the passage of the said act, approved June 30, 1864, and before and at the time of their importation they were commercially known among importers and dealers, and were bought and sold, as crape veils and never otherwise, and were liable to a duty of 50 per cent. ad valorem as a manufacture of silk, and this the plaintiffs pray may be inquired of by the country, and the defendant doth the like, &c.

B. L. LUDINGTON,
Pl'ffs' Att'y.

17 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph C. Alexander, one of the above-named plaintiffs, being duly sworn, says that the foregoing replication is true in substance and matter of fact.

JOSEPH C. ALEXANDER.

Sworn to before me this 18 day of December, 1874.

ALLEN McDONALD,
Notary Public, New York Co.

18 U. S. circuit court.

GEORGE A. MORRISON ET AL.
against
CHESTER A. ARTHUR.

And the said defendant saith that the said replication of the said plaintiff to the said second plea of him, the said defendant, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him, the said defendant; and that he, the said defendant, is not bound by law to answer the same, and this he, the said defendant, is ready to verify; wherefore, for want of a sufficient replication in this behalf, he, the said defendant, prays
19 judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant further states and shows to this court that if it be true as in said replication stated, that the veils therein mentioned, and in this defendant's plea described, and imported by plaintiff, are manufactures of silk as in said replication more fully stated, then the duties exacted on the plaintiffs' importation thereof in 1871, as set forth above, to wit, sixty per cent. ad valorem under sec. 8 of the act of Congress in said defendant's plea cited, was in all respects lawful and proper and due and owing by plaintiffs to the United States immediately upon plaintiffs' importation thereof, at the times mentioned in plaintiffs' bill of particulars.

And also for that the said replication is in other respects uncertain, informal, and insufficient, &c.

20 And the said plaintiffs say that the said replication and the matters therein contained in manner and form as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs, to have and maintain their aforesaid action thereof against the said defendant, and the said plaintiffs are ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the said replication, nor hitherto, in any manner, denied the same, the said plaintiffs pray judgment and their damages by reason of the not performing of the said several promises and undertakings in the declaration mentioned to be adjudged to them, &c.

21 And because the said court, before the aforesaid judges thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the judges thereof, until the third Monday of October, in the year one thousand eight hundred and seventy-four, at the U. S. court building, in the city of New York; and the same day is given to the parties aforesaid,

at the same place, to hear the judgment of the said court thereupon. At which day, before the judges aforesaid, at the U. S. court building, in the city of New York, came, as well the said plaintiffs as the said defendant, by their respective attorneys aforesaid. Whereupon, all and singular the premises aforesaid being seen, and by the court here
22 fully understood, and mature deliberation being thereupon had, it appears to the said court here that the replication aforesaid, and the matters therein contained, are sufficient in law for the said plaintiffs to have and maintain their aforesaid action thereof against the said defendant. Wherefore the said plaintiffs ought to recover against the said defendant, their damages on occasion of the premises.

Therefore it is considered that the said plaintiffs do recover against the said defendant their damages, by occasion of the premises, to one hundred and twenty-eight dollars and twenty-five cents in gold coin by the court here assessed, and also twenty-two dollars and forty-five cents in currency for their costs, and charges by the court now here,
23 adjudged to the said plaintiffs with their assent, which said damages, costs, and charges in the whole amount to one hundred and twenty-eight dollars and twenty-five cents in gold coin, and twenty-two dollars and forty-five cents in currency.

And the said defendant, in mercy, &c.,

Judgment signed this 13th December, 1875.

R. E. STILWELL.
Deputy Clerk.

(Endorsed:) U. S. circuit court. George A. Morrison & al. vs. Chester A. Arthur. Judgment record. B. L. Ludington, pl'ffs' att'y. Filed Dec. 13, 1875.

24 Circuit court of the United States for the southern district of New York.

GEORGE A. MORRISON ET AL.
vs.
CHESTER A. ARTHUR. } At law.

SHIPMAN, J.

This is an action of assumpsit, to recover moneys paid under protest for duties which were exacted by the defendant as collector of the port of New York upon crape veils imported by the plaintiffs in the year 1871. The defendant pleaded specially that the moneys alleged to have been paid were had and received by the defendant as said collector, "in payment for duties due from plaintiffs to the United States on certain importations from a foreign country into the port of New York," and that said moneys constitute a part of the lawful duty of sixty per cent. ad valorem then due and owing to the United States by plaintiffs
25 for the duty at said rate on silk veils, then and there imported as aforesaid, which said silk veils were dutiable accordingly under section eight of the act of Congress entitled "an act to increase duties on imports, and for other purposes," approved June 30th, 1864, and that the said amount of duty "was and is the true and lawful duty on the said silk veils." The replication of the plaintiffs averred that they ought not to be barred, &c., because they say that the articles imported by the plaintiffs were not silk veils, and were not at the time of the importation and entry thereof liable to a duty of sixty per cent. ad valorem, but the same were a manufacture of silk, and were crape veils, and

at the time of the passage of said act, approved June 30th, 1864, and before and at the time of their importation they were commercially known among importers and dealers, and were bought and sold as crape veils, and never otherwise, and were liable to a duty of fifty per cent. ad valorem as a manufacture of silk. To this replication the defendant demurred generally.

26 The portion of the 8th section of the statute of June 30, 1864 (13 Stat's at Large, 210), which is material, is as follows: "That on and after the day and year aforesaid, in lieu of the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected, and paid on the goods, wares, and merchandize enumerated and provided for in this section, imported from foreign countries, the following duties, and rates of duty—that is to say, * * * on silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mitts, aprons, stockings, gloves, suspenders, watch-chains, webbing, braids, fringes, galloons, tassels, cords, and trimmings—sixty per centum ad valorem. On all manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per centum ad valorem."

27 The question of law which is presented by the pleadings is, are veils which are not silk veils, but are a manufacture of silk, and are known commercially as crape veils, and not otherwise, liable to a duty of sixty per cent.

The eighth section of the act of June 30th, 1864, was intended to be a comprehensive section, and to include all articles made of silk, or of which silk is the component material of chief value, by whatever name the articles are known, or for whatever purpose they are used, Congress intended to embrace in one section all the manufactures of silk, and to provide that all the articles which are specifically enumerated in the first clause which has been quoted should pay sixty per cent., and that all articles which are not specifically enumerated in the section should pay fifty per cent. (Smythe vs. Fiske & al., U. S. Sup. C't, Oct. T., 1874.) Bearing in mind that the main object of the section was to classify articles according to the material of which they are composed, it is first important

28 to determine the construction which should be given to the term "silk veils," as used in this section of the statute. Two facts are to be noticed: first, that general terms only are used in this section; and next, that it is not claimed that the term "silk veils" is a commercial term, or that it is a commercial designation of any one kind of veils which are made of silk. It is a term which is used in the ordinary signification which belongs to the words of which the term is composed, and, in the absence of any other language in the statute, includes all veils made of silk. "Where general terms are used, the terms are to be taken in their ordinary and comprehensive meaning, unless it is shown (as, I understand, it is not claimed to be shown in this instance) that they have in their commercial use acquired a special and restricted meaning." (Lattimer v. Smythe, 17 Int. Rev. Record, 12.) It is to be presumed that these words include any veil which is made of silk,

29 although such veil is styled by the importer by a particular name which designates the class or subdivision to which the particular veil belongs. Thus, if the different styles of silk veils are called by different names, such as Honiton, or Brussels, or Point D'Alençon, and are exclusively called by such specific names, these different classes or styles are still silk veils, and are included within the general term, which is used, not for purposes of specific description, but as a compre-

hensive term to include all veils made of a particular material. Importers cannot withdraw their goods from the operation of the general terms of a statute which classifies goods according to the material of which they are made, by imposing upon these goods specific names, which designate a particular kind or subdivision of the general class which is mentioned in the statute. "When the goods which are subjects of duty are designated by the material of which they are made or composed, the statute is to be construed as presumptively including such goods, by whatever subordinate or specific name they may be known, and though all in the commercial world are in the habit of using the specific name when they speak of the particular article in question. For example, if we have a tariff act which imposes a particular duty upon cotton goods, if that designation alone is used in the legislation pertaining to the subject of duty upon the importations, it presumptively includes all cotton goods, even though importers, merchants, dealers, and customers all the country through, when they speak of a particular kind of goods made of cotton, always give the special name of the article; as, for example, under this attempted illustration, muslin, cambric muslin, cotton drilling, cotton shirting, cotton sheeting." (Jaffray et al. vs. Murphy, 19 Int. Rev. Record, 143.) The presumption is, then, that crape veils, being manufactured of silk, are included in the general words of the statute, and are embraced within the term "silk veils," and that presumption will not be rebutted or weakened by proving merely that the term "crape veils" is used to discriminate between the kind of veils which is called by that name and the various other kinds of veils which are made of silk, although it could be shown that the entire body of importers designated this particular article by no other name than crape veils. The mere name which is exclusively applied to the different species of veils is immaterial.

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But there is another principle which is well settled in the construction of tariff acts, and which is that Congress must be understood in the tariff laws to class articles according to the general usages and known denominations of trade, and generally to recognize in the tariff acts the known commercial distinctions which are made in the usages of trade, unless Congress has indicated by the language of the statute an intention to exclude any other classification than the one which it has adopted, or any modification of the classification which it has adopted. Inasmuch as the eighth section is a comprehensive section, intended to include all silk articles, if the first clause was the only clause of the statute which was applicable to veils, such an intention would perhaps be manifested. The statute would then be construed to impose a duty of sixty per cent. upon all veils which are made of silk. But the statute also provides that all manufacturers of silk, not otherwise provided for, shall pay a duty of fifty per cent. The plaintiffs contend that their goods, being a manufacture of silk, have been, by commercial usage, expressly declared not to be silk veils, and that in commercial language they are not made of silk, and having been so declared, and the statute having provided that all other manufactures of silk shall pay a prescribed duty, that this case is brought within the principle which I have just stated. In this position they are sustained by the decisions which have been given both recently and formerly upon the subject.

32

In order to avail themselves of this principle, the plaintiffs aver in their replication that the goods which they imported were not silk veils, but were a manufacture of silk known as crape veils

33

and not otherwise. If, under this replication, it is proved that in trade and commerce crape veils are not silk veils, that is, are contradistinguished from silk veils, and are commercially known as different articles from silk veils, and that the term "crape veil" is a distinctive term which distinguishes the article called by that name from a silk veil, then the term "silk veil" fails to designate a crape veil, and crape veils are dutiable under the clause of the statute which relates to manufactures of silk. If crape veils have thus, in commercial usage, been separated and set apart from the general class to which they presumptively belong, the law infers that Congress did not intend to include them among the general class, there being another clause in the statute in which they may be placed. There is, then, a question of fact for the triers to determine, which is whether these articles are known in trade and commerce as silk veils or not. In other words, are crape veils known in trade as a different article from a silk veil, and com-
34 mercially are they regarded as forming a separate and distinct class of goods from silk veils, and in commercial language to be other than silk veils. Inasmuch as this is one of fact directly presented by the replication, which avers that the veils are not silk veils, and is an issue which if found in favor of the plaintiffs is a successful answer to the defendant's plea, the demurrer should be overruled.

The principles which are involved in this case have recently been fully considered by the late circuit judge in Lattimer v. Smythe, 17 Int. Rev. Record, 12, and Jaffray et al. v. Murphy, 19 Int. Rev. Record, 143, which cases also arose under the silk section of the act of June 30, 1864. The general rule of law in regard to the effect of commercial usage and designations upon the construction of the tariff laws is also declared in U. S. v. 200 Chests of Tea, 9 Wheat., 430; Elliott vs. Swartwout, 10 Peters, 137; Curtis v. Martin, 3 Howard, 108; Maillard v. Law-
35 rence, 16 Howard, 251; U. S. v. Breed, 1 Sumn., 159.

The demurrer is overruled, with leave to the defendant to plead anew.

B. L. Ludington and Geo. D. Lord for plaintiffs.

H. E. Demaine, assist. U. S. dist. att'y, for defendant.

(Endorsed:) Filed Nov. 15, 1875.

36 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy six.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
against
GEORGE A. MORRISON, DEF'T IN ERROR.

Afterwards, to wit, on the second Monday of October, in this same term, before the justice of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants against the said plaintiff,
37 whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant. And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, as the same appears more fully herein, may be reversed, annulled, and altogether held

for nothing, and that he, the plaintiff, may be restored to those things which they have lost by reason of the said judgment.

GEORGE BLISS,
United States Attorney, for Plaintiff in Error.

(Endorsed:) U. S. Supreme Court. Chester A. Arthur, pl'ff in error, versus George A. Morrison, def't in error. Assignment of error. George Bliss, United States attorney for the southern district of New York. Filed Sept. 28th, 1876.

38 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To George A. Morrison, John Herriman, and Joseph A. Alexander, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD.

(Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against George A. Morrison et al., defendants in error. Citation.

NEW YORK, 1876.

The defendants in error hereby acknowledge due, sufficient, and legal service of the above citation by their attorney.

B. L. LUDINGTON, for
Att'y for Def'ts in error.

Filed M'ch 14, 1876.

(Indorsement on cover:) No. 517. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. George A. Morrison, John Herriman, and Joseph A. Alexander. S. New York C. C. U. S. Filed 13th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
GEORGE A. MORRISON AND OTHERS. } No. 517.

ERROR TO UNITED STATES CIRCUIT COURT FOR SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
GEORGE A. MORRISON AND OTHERS. } No. 517.

ERROR TO UNITED STATES CIRCUIT COURT FOR SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The defendants in error brought this suit to recover the sum exacted from them by the collector of the port of New York in excess of what they protested to be the lawful duty upon certain imported veils, which the collector said were "silk veils," and the importers said were "crape veils," though made of silk. The question, substantially, was whether they were dutiable as "manufactures of silk," &c., or specifically as "silk veils."

The portion of the 8th section of the statute of June 30, 1864, c. 171, § 8 (13 Stats. at Large, 210), which is material, is as follows: "That on and after the day and year

aforesaid, in lieu of the duties heretofore imposed by law on the articles hereinafter mentioned, there shall be levied, collected, and paid, on the goods, wares, and merchandise enumerated and provided for in this section, imported from foreign countries, the following duties and rates of duty—that is to say, * * * on *silk* vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, *veils*, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, mitts, aprons, stockings, gloves, suspenders, watch-chains, webbing, braids, fringes, galloons, tassels, cords, and trimmings—sixty per centum ad valorem. On all *manufactures of silk*, or of which silk is the component material of chief value, not otherwise provided for, fifty per centum ad valorem." (R. S., sec. 2504, schedule H, page 472.)

The question of law which is presented by the pleadings is, are veils which are not commonly called silk veils, but are veils manufactured of silk, and are known commercially as 'crape veils,' and not otherwise, liable to a duty of sixty per cent.

ASSIGNMENT OF ERROR.

The district judge held these importations liable to but fifty per cent duty, and that the original plaintiffs were entitled to judgment for the ten per cent. excess, (Record, 8, 6); which ruling and judgment are assigned for error.

BRIEF.

"The eighth section of the act of June 30th, 1864, was intended to be a comprehensive section, and to include all articles made of silk, or of which silk is the component material of chief value, by whatever name the articles are known, or for whatever purpose they are used. Congress intended to embrace in one section all the manufactures of silk, and to provide that all the articles which are specifically enumerated in the first clause, which has been quoted, should pay sixty per cent., and that all articles which are not specifically enumerated in the section should pay fifty per cent. (Smythe *v.* Fiske, 23 Wall., 381, top.) Bearing in mind that the main object of the section was to classify articles according to the material of which they are composed, it is first important to determine the construction which should be given to the term 'silk veils,' as used in this section of the statute. Two facts are to be noticed: first, that general terms only are used in this section; and next, that it is not claimed that the term 'silk veils' is a commercial term, or that it is a commercial designation of any one kind of veils which are made of silk. It is a term which is used in the ordinary signification which belongs to the words of which the term is composed, and, in the absence of any other language in the statute, includes all veils made of silk. 'Where general terms are used, the terms are to be taken in their ordinary and comprehensive meaning, unless it is shown (as, I understand, it is not claimed to be shown in this instance) that they have in their commercial use acquired a special and restricted meaning.'

(Lattimer *v.* Smythe, 17 Int. Rev. Record, 12.) It is to be presumed that these words include any veil which is made of silk, although such veil is styled by the importer by a particular name which designates the class or subdivision to which the particular veil belongs. Thus, if the different styles of silk veils are called by different names, such as Honiton, or Brussels, or Point d'Alençon, and are exclusively called by such specific names, these different classes or styles are still silk veils, and are included within the general term, which is used, not for purposes of specific description, but as a comprehensive term to include all veils made of a particular material. Importers cannot withdraw their goods from the operation of the general terms of a statute which classifies goods according to the material of which they are made, by imposing upon these goods specific names, which designate a particular kind or subdivision of the general class which is mentioned in the statute." (See also Jaffray *v.* Murphy, 19 Int. Rev. Rec., 143, cited.)

After the foregoing just remarks, and adding that these importations might come within the term "silk veils" if this last clause were not there to comprehend them, the learned district judge ruled that the last clause did embrace these articles. This we deem erroneous. As this court said in Smythe *v.* Fiske, *ubi sup.*, this general clause meant only to include those manufactures of silk which the preceding ones did not reach, and which would otherwise escape taxation. It is only upon things which the previous enumeration *could not* cover that this general one is operative; so that, if the learned judge is right in saying the words silk veils would include those known as crape veils but for this last clause, he is wrong

in allowing this clause to diminish or destroy the effect of the preceding ones.

In the discussion of the question, as appears also by the cases cited to sustain his view of it, the judge assumes that Congress did not mean to be governed by the *material* of which the importations were made.

However this may have been as to prior tariff acts, it is evident that the present classification is strictly with reference to the material. Schedule H is entitled "Silk and silk goods."

The classification which concerns us has relation to two things, viz, that the articles are made of silk, and designed for use as wearing apparel. It is not simply upon "silk veils," but upon silk vestings, shawls, mantillas, handkerchiefs, veils, shirts, bonnets, hose, gloves, &c. *There is no specific mention in the tariff of any article of "crape;"* that is, it nowhere notices any distinction between silk and crape. In this important particular it differs from those construed in the decisions by which it is sought to sustain the present judgment. *E. g.*, in the case of 200 chests of tea (9 Wheaton, 430), the word "bohea" was employed to distinguish certain low grades of black tea from the higher; it was not, like the present, an attempt to take certain kinds of black tea out of the general term "tea." In Curtis *v.* Martin (3 Howard, 108), the duty was upon "cotton bagging," made of hemp, with sole reference to its *use* and not to the material of which it was made. It designated a specific article by itself. So in Maillard *v.* Lawrence (16 Howard, 251). In Elliot *v.* Swartout (10 Peters, 137), it appears that Congress had recognized—as, indeed, it has in the very clause we are now considering—the difference be-

tween woolen and worsted; therefore manufactures of wool could not include those of worsted. But, as before remarked, no distinction is here recognized between silk and crape.

Upon the theory contended for by each party, the importations are confessedly dutiable as silks.

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U. S. Supreme Court.

CHESTER A. ARTHUR,
Plaintiff in Error,

vs.

GEORGE A. MORRISON *et al.*

October Term,
1877.
No. 517.

STATEMENT.

The amended plea alleges that the articles imported by plaintiffs below were *silk veils*, and that they were liable to duty at 60 per cent., under that clause of Section 8, Act of June 30, 1864, which imposes that rate of duty on "silk vestings, pongees, shawls, "scarfs, mantillas, pelerines, handkerchiefs, *veils*, "laces," &c.

13 Stats., 210, middle. Record, folios 12 to 14.

This clause is to be read as if the word *silk* preceded each noun.

Chapon *v.* Smythe, 11 Blatch., 120.

The replication alleges that the articles imported "were not *silk veils*, and were not, at the time of "the importation and entry thereof, liable to a duty "of 60 per cent. *ad valorem*, but the same were a

"*manufacture of silk* and were *crape veils*, and at "the time of the passage of said Act, approved "June 30, 1864, and before and at the time of their "importation they were commercially known among "importers and dealers, and were bought and sold, "as *crape veils*, *and never otherwise*, and were lia- "ble to a duty of 50 per cent. *ad valorem*, as a man- "ufacture of silk."

Record, folios 15 and 16.

The replication tendered an issue of fact to be tried by a jury. But defendant below chose to put in a demurrer which *admits* the facts alleged, and thus the issue to be determined is, Are *veils* which are *not silk veils*, but which are commercially known as *crape veils*, *and not otherwise*, and which are a manufacture of silk, liable to a duty of 60 per cent.?

Record, folios 24 to 35.
Morrison *v.* Arthur, 13 Blatch., 194 (this cause below).

ARGUMENT.

I.

Terms used in the tariff to classify different articles of merchandise are used in their commercial sense.

200 chests of tea, 9 Wheaton, 450.
Barlow *vs.* The United States, 7 Peters, 404.
United States *vs.* 112 Casks of Sugar, 8 Peters, 277.
Elliot *vs.* Swartout, 10 Peters, 146.
Curtis *vs.* Martin, 3 How., 108.
Lawrence *vs.* Allen, 7 How., 790.
Lennig *vs.* Maxwell, 3 Blatch., 125.
Tyng *vs.* Grinnell, 2 Otto, 470.

II.

It may be said that the articles imported being *veils*, and it being conceded that they are a *manufacture of silk*, that they are silk veils.

But the Courts have held that "almonds" were not liable to duty as "dried fruits," nor "singing birds" as "live animals," nor "crape in the piece" as "piece silks," unless so known in trade, nor "patent leather" as a "finished skin"; and yet in all these cases the article imported was within the *letter* of the statute.

Homer *v.* The Collector, 1 Wallace, 486.
Reiche *v.* Smythe, 13 Wallace, 162.
Lottimer *v.* Smythe, 17 Internal Rev. Rec., 12.
Movius *v.* Arthur, No. 82 present calendar.

III.

The whole question hinges upon what is a "silk *veil*"? Under Point I. it must be an article commercially known as a "*silk veil.*" And four different judges who have construed this silk section unite in the opinion that the goods there specially described must be *commercially known* as silk goods.

Judge Woodruff in Lottimer *v.* Smythe, 17 Int. Rev. Rec., 12.
Judge Shipman in Duden *v.* Murphy, 18 Ibid., 174.
Judge Smalley in Chapon *v.* Smythe, 11 Blatch., 120.
Judge Clifford in Lane v. Russell, 12 Int. Rev. Rec., 105.

IV.

It has never been held in a single instance that the *material* of which a fabric is made should control the rate of duty, where such article has a well-known commercial name, and is described in the tariff by it.

If an article has not acquired a commercial name, then the material may fix the rate.

In Lane *v.* Russell, 12 Inter. Rev. Record, 105, "ribbons" were held liable to duty at 60 per cent. as silk ribbons, though made partly of cotton, because they were commercially known as "silk ribbons."

In Smythe *v.* Fiske, 23 Wallace, 374, "neck-ties" made *wholly of silk* were held liable to duty at 50 per cent., as a "manufacture of silk not otherwise provided for," because the jury found they were not *commercially* known as "silk scarfs" or as "ready-made clothing."

The commercial designation, and not the *material* of which the article is made, determines the rate of duty.

U. S. *v.* Sarchet, Gilpin, 273.
U. S. *v.* Breed, 1 Sumner, 159. (Crushed sugar.)
Dorr *v.* Hoyt, 2 Hunt's Merchants' Mag., 262. (Cravats of wool.)
Chapon *v.* Smythe, 11 Blatch., 120.
14th Opinions Attorney General, 130.

Elliot *v.* Swartout, 10 Peters, 46, an undoubted authority, holds that "*worsted* goods *made wholly of wool* were not liable to duty as a manufacture of wool."

And yet the goods were made of wool; they were literally a "manufacture of wool," and thus within the letter of the statute.

V.

Since Lottimer *v.* Smythe, 17 Internal Rev. Record, 12, this case is practically *res adjudicata*.

In that case, crape made wholly of silk and imported in the piece was found by the jury not to be liable to duty as "piece silks," under the charge that if the goods were *commercially known as crapes*, and not as piece silks, it made no difference of what material they were made.

The Government acquiesced in this decision, and refunded the money collected on their former view of the statute.

> See Letter of Secretary of Treasury of July 31, 1872, Appendix A of this brief.

It makes no difference whether crape comes in pieces of 30 or 40 yards, or cut up in lengths suitable for veils, it is the same article, made of the same material, intended for the same uses, and both are known by the same commercial designation, viz., "*crapes*."

The later cases on this silk clause show that it is the commercial designation, and not the material, which governs.

> Duden *v.* Murphy, 18 Int. Rev. Record, 174.
>
> Chapon *v.* Smythe, 11 Blatchford, 120.

VI.

Under the construction put by the Government on its own laws, ribbons, suspenders, laces, &c., composed largely of cotton, are assessed at 60 per cent., because they are commercially known as silk ribbons, suspenders, laces, &c.

VII.

We call especial attention to the fact that articles *made wholly of silk* are within the very *letter* of the residuary clause. First we have a provision for "all manufactures of silk not otherwise provided for," this includes all articles otherwise provided for *wholly* silk in material (e. g.), crapes, etc.

Then we have a provision for articles of which "silk is the component material of chief value not otherwise provided for."

What then becomes of the argument that because the articles were *veils* made wholly of silk, they must pay 60 per cent. when we find in the very letter and spirit of the residuary clause a provision for articles made entirely of silk and dutiable by material and not commercially at 50 per cent. ?

VIII.

It may be well to consider that the articles enumerated in the silk clauses by name are different in character from *crapes*, they are made either of woven fabrics from *thread*, or on cushions or frames from *thread*, while crapes are made from raw silk directly, and become separate and distinct fabrics in commerce the same as silk and worsted.

See Extract from McElrath's Commercial Dictionary, Appendix B. of this brief. Title crape.

IX.

It is reasonable to assume that the Congress of 1864 knew that there was an article of commerce known as "crape," and that it was made of silk. To suppose otherwise would convict Senators and Congressmen of being ignorant of a fact which is of almost universal knowledge. Hence it may be justly inferred that in using the words "silk veils" they meant to include all articles commercially known as "silk veils," while under the term manufactures of silk not otherwise provided for they intended to include crapes.

X.

Congress in 1875 passed an Act on the subject of silk, and desiring to make all manufactures of silk pay a uniform rate, discarded the enumerations of the Act of 1864, and put a duty of 60 per cent. "on "all goods, wares and merchandise not otherwise "herein provided for made of silk, or of which silk "is the component material of chief value irrespec- "tive of the classification thereof for duty by or un- "der previous laws or of their commercial designa- "tion.' In that way alone did they deem that for the future a uniform rate of duty upon silk manufactures could be maintained in view of the practice of the Executive Departments and the rulings of the Courts upon commercial designation. With the passage of that Act this question ceased.

Sec. 1., Act Feb. 8, 1875. 18 Stats., 307.

EDWARD HARTLEY,
Counsel for Deft. in error.

Appendix A.

Treasury Department, July 31, 1872.

SIR: Application has been made to this Department for a reversal of its decision whereby silk crapes are classified as silks in the piece, and charged with 60 per cent. duty, and for a refund of the difference in duty between that rate and the rate claimed by the parties, viz., 50 per cent. *ad valorem*.

A suit involving this question has been twice tried. On one trial the jury disagreed, and on the other trial a verdict was had against the Government. The application of the parties has been submitted to the Solicitor of the Treasury and to the United States District Attorney at New York, both of whom state substantially that, in their opinion, the question involved is mainly, if not entirely, one of commercial designation, and in view of the trial already had, and of the conflict of evidence likely to be presented on any further trial of the case, they do not recommend that a further trial be had.

As it is the desire of the Department to avoid undue litigation in doubtful cases, I am disposed to join in the view taken by the law officers before mentioned, and have, therefore, to direct that your practice in this respect be changed, and that such goods hereafter be classified at 50 per centum as "manufactures of silk not otherwise provided for," and you are authorized to prepare the necessary certified statements for the refund to the importers of the amounts found due them upon certificates of discontinuance of the various suits being filed; and also in cases where protests and appeal have been duly filed, and no suits instituted where time for commencement of suits has not expired.

I am, very respectfully,

WM. A. RICHARDSON,
Acting Secretary.

Collector of Customs,
New York.

Appendix B.

(From McElrath's Commercial Dictionary, p. 164).

CRAPE, a delicate, transparent or semi-transparent gauze-like fabric, made of raw silk divested of its gloss, woven without crossing, and made stiff with gum water. Crape is either crisped or smooth; the crisped, which is double, requires that the silk should be spun harder than for the single, as the degree of twist regulates the crisping. It is manufactured in France and in England, and is used mostly for trimmings, and for mourning goods. The Canton and Japanese crapes are not stiffened, made of better silk, are of various colors, and are used for ladies' dresses, shawls, etc. Crapes, in manufacturers, fall under the generic term of silk, just as flannels, in manufactures, fall under the generic term of cloths, *in commerce they are quite distinct, crape goods bearing the same relation to silks which flannels do to broadcloths.*

Fillmore

20 B. 522
18 H 416
3 Blatch 408
9 H. 634
4 H — 333